

## REMARKS

### Claim Changes

Claims 1, 12, and 16 are amended to more clearly recite the claimed invention. Support for the changes can be found on page 4, lines 18-25. Thus, no new matter is added.

### Interview Summary

Applicant thanks the Examiner for his courtesy in extending a telephone interview with Applicant's representative on September 13, 2007. The Examiner and Applicant's representative discussed U.S. provisional patent application, Serial No. 60/433937 (Gholmieh-Provisional) in light of claims 1, 12, and 16 of the application. As a consequence of the interview, the Examiner stated that in Gholmieh 60/433937, under "Description of my (our) solution," the paragraph that starts with "Thus, given the last reported power headroom value . . ." is interpreted to mean that (a) Gholmieh 60/433937 is a closed-loop power control system, which generally uses link quality for setting power control values and (b) link quality is a type of channel variance.

### Rejection of Claims 1-4, 8-9, 11-14, and 16-18 under 35 U.S.C. § 102(e) as being anticipated by US 2004/0147276 (Gholmieh)

The Office Action has cited Gholmieh (US 2004/0147276) for a 102(e) rejection of claims 1-4, 8-9, 11-14, and 16-18. The filing date for the cited reference Gholmieh (US 2004/0147276) is December 16, 2003 which is three months after the September 16, 2003 filing date of the application under consideration. Therefore, Applicant understands that the related provisional patent application serial no. 60/433937, filed on December 17, 2002, is the true basis for the rejection. Applicant has reviewed and considered Gholmieh-Provisional (60/433937) as well as Gholmieh (US 2004/0147276) in order to clarify the differences between Gholmieh-Provisional (60/433937) and Gholmieh (US 2004/0147276).

Applicant has amended independent claims 1, 12, and 16 to clarify the invention. In particular, independent claims 1, 12, and 16 have been amended to recite "wherein the communication channel variance condition is at least one of a primary pilot power variance, fading period and fade depth estimate, or a peak-to-average estimate within an adaptive measurement interval." Neither Gholmieh-Provisional (60/433937) nor Gholmieh (US 2004/0147276) shows or suggests determining any one of a primary pilot power variance, a

fading period and fade depth estimate, or a peak-to-average estimate within an adaptive measurement interval. Gholmieh-Provisional (60/433937) and Gholmieh (US 2004/0147276) simply do not show or suggest these types of channel variance conditions and “establishing a headroom value based on the communication channel variance condition” as required by amended independent claims 1, 12, and 16. Applicant therefore respectfully requests reconsideration of the rejection of claims 1, 12, and 16 under 35 U.S.C. § 102(e) as being anticipated by Gholmieh-Provisional (60/433937) or Gholmieh (US 2004/0147276) as herein amended.

Claims 2-4, 8-9, and 11 depend on claim 1; claims 13-14 depend on claim 12; and claims 17-18 depend on claim 16. Thus these dependent claims are also not anticipated by Gholmieh-Provisional (60/433937) or Gholmieh (US 2004/0147276). Reconsideration and withdrawal of the rejection of claims 1-4, 8-9, 11-14, and 16-18 under 35 U.S.C. § 102(e) as being anticipated by Gholmieh (US 2004/0147276) and Gholmieh-Provisional (60/433937) is respectfully requested.

Rejection of Claims 5-6, 15, and 19-20 under 35 U.S.C. § 103(a) as being unpatentable over US 2004/0147276 (Gholmieh) in view of US 6,563,810 (Corazza).

Corazza fails to overcome the deficiencies of Gholmieh-Provisional (60/433937) and Gholmieh (US 2004/0147276) because Corazza also does not show or suggest “determining a communication channel variance condition, wherein the communication channel variance condition is at least one of a primary pilot power variance, fading period and fade depth estimate, or a peak-to-average estimate within an adaptive measurement interval” and “establishing a headroom value based on the communication channel variance condition” as recited in amended independent claims 1, 12, and 16. Corazza uses a maximum power which is reduced by the headroom power to provide for power control variations. However, for the case of battery-limited condition, Corazza chooses the lesser power denoted by  $P(R)$ .  $P(R)$  is a transmit value selected for reliable transmission and it does not contain any headroom or margin for power control variations. See Corazza, col. 6, lines 30-50.

Thus, claims 5-6, 15, and 19-20 are not unpatentable over Gholmieh-Provisional (60/433937) and Gholmieh (US 2004/0147276) and Corazza. Reconsideration and withdrawal of the rejection of claims 5-6, 15, and 19-20 under 35 U.S.C. 103(a) as being unpatentable over

Gholmieh (US 2004/0147276) and Gholmieh-Provisional (60/433937) in view of Corazza is respectfully requested.

Rejection of Claim 7 under 35 U.S.C. § 103(a) as being unpatentable over US 2004/0147276 (Gholmieh) in view of US 7,023,822 (Czaja).

Czaja, like Corazza, also fails to overcome the deficiencies of Gholmieh (60/433937) and Gholmieh (US 2004/0147276) in that Czaja does not show or suggest “determining a communication channel variance condition, wherein the communication channel variance condition is at least one of a primary pilot power variance, fading period and fade depth estimate, or a peak-to-average estimate within an adaptive measurement interval” and “establishing a headroom value based on the communication channel variance condition” as recited in amended independent claim 1.

Claim 7 depends indirectly upon claim 1 and thus is not unpatentable in view of Gholmieh (US 2004/0147276) and Gholmieh-Provisional (60/433937) and Czaja. Reconsideration and withdrawal of the rejection of claim 7 under 35 U.S.C. 103(a) as being unpatentable over Gholmieh (US 2004/0147276) and Gholmieh-Provisional (60/433937) in view of Czaja is respectfully requested.

Rejection of Claim 10 under 35 U.S.C. § 103(a) as being unpatentable over US 2004/0147276 (Gholmieh) in view of US 2003/0002464 (Rezaiifar)

Rezaiifar also fails to overcome the deficiencies of Gholmieh-Provisional (60/433937) and Gholmieh (US 2004/0147276) in that Rezaiifar does not show or suggest “determining a communication channel variance condition, wherein the communication channel variance condition is at least one of a primary pilot power variance, fading period and fade depth estimate, or a peak-to-average estimate within an adaptive measurement interval” and “establishing a headroom value based on the communication channel variance condition” as recited in amended independent claim 1. Cited paragraphs [0095]-[0096] of Rezaiifar simply state that the maximum rate is a function of the current reverse rate added to the power headroom parameter divided by the energy-per-bit required.

Claim 10 depends indirectly upon claim 1 and thus is not unpatentable in view of Gholmieh-Provisional (60/433937) and Gholmieh (US 2004/0147276) and Rezaiifar.

Reconsideration and withdrawal of the rejection of claim 10 under 35 U.S.C. 103(a) as being unpatentable over Gholmieh (US 2004/0147276) and Gholmieh-Provisional (60/433937) in view of Rezaiifar is respectfully requested.

### Conclusion

Applicant respectfully requests that a timely Notice of Allowance be issued in this case. Such action is earnestly solicited by the Applicant. Should the Examiner have any questions, comments, or suggestions, the Examiner is invited to contact the Applicant's attorney or agent at the telephone number indicated below.

Please charge any fees that may be due to Deposit Account 502117, Motorola, Inc.

Respectfully submitted,

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